

2005 DRAFTING REQUEST

Bill

Received: **01/07/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Gary Sherman (608) 266-7690**

By/Representing: **judy**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - guns and weapons**
Criminal Law - law enforcement

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Sherman@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**
cathlene.hanaman@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Active and retired law enforcement officers carrying concealed weapons

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 01/13/2005	wjackson 01/13/2005		_____			
/P1			jfrantze 01/14/2005	_____	mbarman 01/14/2005		
/P2	mdsida 02/04/2005	wjackson 02/09/2005		_____			

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/1	mdsida 02/22/2005	wjackson 03/02/2005	rschluet 02/09/2005	_____			S&L
/2			jfrantze 03/03/2005	_____	lemery 03/03/2005		S&L
/3	mdsida 04/19/2005	wjackson 04/23/2005	pgreensl 04/26/2005	_____	lemery 04/26/2005	sbasford 04/28/2005	S&L
/4	mdsida 06/06/2005	wjackson 06/07/2005	jfrantze 06/07/2005	_____	mbarman 06/14/2005	mbarman 06/14/2005	

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At
Intro.

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*Self
6/7*

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/?	mdsida	1/11/13	1/14	1/14			

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<END>

Dsida, Michael

Subject:

FW:

-----Original Message-----

From: Sherman, Gary
Sent: Sunday, December 19, 2004 12:39 PM
To: Kelly, Judy
Cc: Tribys, Eleanora
Subject:

There was a federal law passes recently that mandates states to provide concealed carry permits to retired peace officers. I want a bill drafted that complies with that law. To the extent possible without conflicting with the federal law, it should have the same terms as the bill for peace officers that passed our house last session.

Gary

Dsida, Michael

From: Kelly, Judy
Sent: Friday, January 07, 2005 3:42 PM
To: Dsida, Michael
Subject: FW: Retired peace officers carrying concealed weapons

Mike, Sure enough that's what happened. Sorry about that. I hope this response helps.

-----Original Message-----

From: Sherman, Gary
Sent: Monday, December 20, 2004 12:31 PM
To: Kelly, Judy
Subject: RE: Retired peace officers carrying concealed weapons

1. Since the object is to comply with federal law, we need to do what we are required to do under federal law.
2. I think we should provide that the retired officers should have whatever firearms training the Law Enforcement Standards Board requires for active officers, as permitted by the federal law. That way, if we do require firearms training in the future, the law will not have to be rewritten. If we don't, then there is no conflict.

Gary

-----Original Message-----

From: Kelly, Judy
Sent: Monday, December 20, 2004 10:52 AM
To: Sherman, Gary
Cc: Tribys, Eleanora
Subject: FW: Retired peace officers carrying concealed weapons

-----Original Message-----

From: Dsida, Michael
Sent: Monday, December 20, 2004 10:32 AM
To: Kelly, Judy
Subject: Retired peace officers carrying concealed weapons

1. The federal law applies to active duty law enforcement officers from other states and to retired law enforcement officers from any state. Do you want the first bill to apply to both categories, or just to retirees?
2. With respect to retirees, federal law requires that they receive whatever training in firearms that an active duty law enforcement officer would be required to receive. Wisconsin law, however, does not require regular firearms training for law enforcement officers. (We do require training for recruits, and I assume that most law enforcement agencies choose to require firearms training on a regular basis for their officers, but neither of those factors appears to be relevant to this issue.) Thus, there would be no ongoing training for retirees. Is that okay?

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@legis.state.wi.us

*Not true.
have
Cd be asy stds apply
via ID card reqts*

D Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 ^{Reger} **AN ACT** *to renumber and amend* 941.23; and *to create* 20.455 (2) (gu), 165.85
2 (4) (bn) 1g., 175.50, 941.23 (1), 941.23 (2) (a), 941.23 (2) (b) and 941.23 (2) (c) of
3 the statutes; **relating to:** carrying of concealed weapons by out-of-state and
4 retired law enforcement officers, granting rule-making authority, and making
5 an appropriation.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 **SECTION 1.** 20.455 (2) (gu) of the statutes is created to read:
7 20.455 (2) (gu) *Training, identification cards, and certifications relating to*
8 *carrying of concealed weapons. All moneys received as fees under s. 175.50 (6) to*
9 *provide training, identification cards, and certifications for out-of-state and retired*
10 *law enforcement officers seeking to carry concealed weapons.*

1 **SECTION 2.** 165.85 (4) (bn) 1g. of the statutes is created to read:

2 165.85 (4) (bn) 1g. Training provided under subd. 1. shall include at least 4
3 hours of classroom training and 4 hours of range training each fiscal year regarding
4 the proper use of firearms. The board may promulgate rules regarding the content
5 of the training.

 ****NOTE: 1) Do you want to increase the total number of hours of training required
for recertification under s. 165.85 (4) (bn) 1. (currently 24 hours per year) to account for
this new requirement? 2) During one of our phone conversations, we discussed the
possibility of a retiree meeting the training requirements through military training. But
that would only work if an active duty officer also has that option. Do you want to include
something along those lines? If so, you could accomplish that by giving the Law
Enforcement Standards Board rule-making authority.

6 **SECTION 3.** 175.50 of the statutes is created to read:

7 **175.50 Training for retired law enforcement officers seeking to carry**

8 **concealed weapons. (1) DEFINITIONS.** In this section:

9 (a) "Law enforcement officer" means a person who is employed by a public
10 agency for the purpose of engaging in, or supervising others engaging in, the
11 prevention, detection, investigation, or prosecution of, or the incarceration of any
12 person for, any violation of law and who has statutory powers of arrest.

13 (b) "Qualified retired federal or out-of-state law enforcement officer" means
14 a person who, before retiring, was employed as a law enforcement officer with a
15 public agency other than a Wisconsin law enforcement agency and who meets the
16 requirements of sub. (4).

17 (c) "Qualified retired Wisconsin law enforcement officer" means a person who,
18 before retiring, was employed as law enforcement officer with a Wisconsin law
19 enforcement agency and who meets the requirements of sub. (4).

20 (d) "Tribal law enforcement agency" means an agency of a tribe if the agency
21 is established for the purpose of preventing and detecting crime on the reservation

1 or trust lands of the tribe and enforcing the tribe's laws or ordinances and employs
2 full time one or more persons who are granted law enforcement and arrest powers
3 under s. 165.92 (2) (a).

4 (e) "Wisconsin law enforcement agency" means a Wisconsin law enforcement
5 agency, as defined in s. 175.46 (1) (f), or a tribal law enforcement agency.

6 (2) DUTIES OF WISCONSIN LAW ENFORCEMENT AGENCIES. Upon request, a
7 Wisconsin law enforcement agency that employed a qualified retired Wisconsin law
8 enforcement officer immediately before his or her retirement shall make available
9 to the officer, at his or her own expense, whatever training the agency provides
10 regarding firearms to its active duty officers under s. 165.85 (4) (bn) 1g. If the person
11 satisfactorily completes the training, or if the person satisfactorily completed such
12 training during the preceding 12 months and while still employed by the agency, the
13 agency shall issue and provide the person, at his or her own expense, an
14 identification card that includes the person's photograph and that meets the
15 requirements of sub. (5).

****NOTE: (Should there be any limit on the number of times an agency must provide
the training to a particular retiree? For example, should it only be required to provide
the training once every 12 months?)

16 (3) DUTIES OF DEPARTMENT OF JUSTICE. Upon request, the department of justice
17 shall make available to a qualified retired federal or out-of-state law enforcement
18 officer, at his or her own expense, whatever training the department provides
19 regarding firearms to its active duty officers under s. 165.85 (4) (bn) 1g, but only if
20 the person is a resident of this state. If the officer satisfactorily completes the
21 training, the department shall issue and provide the person, at his or her own
22 expense, a written certificate that meets the requirements of sub. (5).

****NOTE: There are a number of other ways to allocate the training responsibility
between DOJ and other law enforcement agencies. Here are a few: 1) DOJ provides all

of the training to retirees (in which case local law enforcement agencies are not involved at all); 2) local law enforcement agencies are required to provide training to any retired law enforcement officer (not just one of their own former employees) who requests it; 3) local law enforcement agencies are required to provide training to any retired law enforcement officer who worked for the federal government or in another state and who requests it; or 4) the Law Enforcement Standards Board selects the agencies that provide the training.

1 (4) ELIGIBILITY REQUIREMENTS. A retired Wisconsin law enforcement officer is
2 qualified to receive an identification card under sub. (2) and a retired federal or
3 out-of-state law enforcement officer who is a resident of this state is qualified to
4 receive a certification under sub. (3) if all of the following apply:

5 (a) The person retired in good standing from service as a law enforcement
6 officer with a public agency for reasons other than mental instability.

****NOTE: Federal law does not include a definition of "mental instability." Should there be one here?

7 (b) At least one of the following apply:

8 1. Before retiring, the person was regularly employed as a law enforcement
9 officer for an aggregate of 15 years or more.

10 2. The person completed any applicable probationary period of service with the
11 agency and retired from service with the agency due to a service-connected
12 disability, as determined by the agency.

13 (c) The person has a nonforfeitable right to benefits under the agency's
14 retirement plan.

15 (d) The person is not prohibited from possessing a firearm under s. 941.29 or
16 under federal law.

****NOTE: This bill does not provide any method to confirm a retiree's eligibility to carry a concealed weapon under federal law. An officer who encounters a person carrying an identification card issued under the bill may be able to determine whether the person has a disqualifying conviction, but not whether he or she satisfies the other criteria (such as the 15-years-of-service requirement). This issue is most relevant with federal and out-of-state officers, who may have little or no prior contact with the agency (at this point, DOJ) that issues their certifications. Do you want to require the issuing agency to conduct a background check and an employment check (which would entail the person

might

having

signing consent forms to allow the release of employment information) before it issues the certification?

(5) REQUIREMENTS FOR IDENTIFICATION CARDS OR CERTIFICATIONS. An identification card issued to a person under sub. (2) or a certificate issued to a person under sub. (3) shall indicate all of the following:

(a) That the person has met the issuing agency's standards for training for its law enforcement officers to carry a firearm.

(b) The date on which the person completed the training described in par. (a).

(c) The type of firearm that, as a result of the training, the person is qualified to carry concealed.

****NOTE: Federal law contemplates that, if, after retiring from a law enforcement agency in one state, a person wants to move to another state and carry a concealed weapon there, he or she will have a photo ID issued by that agency. Federal law, however, does not mandate that the agency issue (or reissue) such an ID card. I assume that most officers have photo ID cards when they retire, but do you want to require Wisconsin law enforcement agencies to provide them to retirees who do not have them or who have lost them? If so, should the agency only do so if it first verifies that the person meets the requirements of sub. (4)?

qualify
qualify the person to carry concealed any handgun, only semiautomatic handguns, or only that model of handgun.
it is unclear whether training regarding the use of a particular model of semiautomatic handgun would qualify the person to carry concealed any handgun, only semiautomatic handguns, or only that model of handgun.
(6) FEES. Payments made to the department of justice under sub. (2) or (3) shall [semi-automat] be credited to the appropriation under s. 20.455 (2) (gu).
[One word] → automatic handgun

SECTION 4. 941.23 of the statutes is renumbered 941.23 (2) (intro.) and amended to read:

941.23 (2) (intro.) Any person ~~except a peace officer~~ other than one of the following who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor:

SECTION 5. 941.23 (1) of the statutes is created to read:

941.23 (1) In this section:

(a) "Destructive device" means any of the following but does not include an exempt device:

1 1. A bomb, a grenade, a rocket having a propellant charge of more than four
2 ounces, a missile having an explosive or incendiary charge of more than 0.25 ounce,
3 a mine, or any similar device.

4 2. Any type of weapon, other than a shotgun or a shotgun shell that the U.S.
5 department of justice finds is generally recognized as particularly suitable for
6 sporting purposes, that expels, or that may be readily converted to expel, a projectile
7 by the action of an explosive or other propellant and that has a barrel with a bore of
8 more than 0.5 inch in diameter.

9 3. Any combination of parts that is designed for converting, or intended for use
10 in converting, any device into a device described in subd. 1. or 2. and from which a
11 device described in subd. 1. or 2. may be readily assembled.

 ****NOTE: Like federal law, this bill does not authorize retired law enforcement
officers to carry every type of concealed weapon. It only covers firearms. But Wisconsin
courts have defined "firearm" in such a way (a "weapon that acts by force of gunpowder
to fire a projectile," *State v. Rardon*, 185 Wis. 2d 701, 706 (App. 1994)) that it could be
construed to include bombs or other weapons that lack a barrel. Therefore, like federal
law, the bill explicitly excludes such "destructive devices."

12 (b) "Exempt device" means any of the following:

13 1. A device that is neither designed nor redesigned for use as a weapon.

14 2. A device that, although originally designed for use as a weapon, is redesigned
15 for use as a signaling, pyrotechnic, line throwing, safety, or similar device.

16 3. Surplus ordnance sold, loaned, or given by the U.S. secretary of the army
17 under 10 USC 4684 (2), 4685, or 4686.

18 4. Any other device that the U.S. department of justice finds is not likely to be
19 used as a weapon, is an antique, or is a rifle that the owner intends to use solely for
20 sporting, recreational, or cultural purposes.

21 (c) "Qualified out-of-state law enforcement officer" means a law enforcement
22 officer, as defined in s. 175.50 (1) (a), to whom all of the following apply:

- 1 1. The person is employed by a state or local public agency in another state.
- 2 2. The agency has authorized the person to carry a firearm.
- 3 3. The person is not the subject of any disciplinary action by the agency.
- 4 4. The person meets all standards established by the agency ^{to} ~~that~~ qualify the
- 5 person ^{on a regular basis} to use a firearm.
- 6 5. The person is not prohibited under s. 941.29 or under federal law from
- 7 possessing a firearm.

8 (d) "Qualified retired federal or out-of-state law enforcement officer" has the
9 meaning given in s. 175.50 (1) (b).

10 (e) "Qualified retired Wisconsin law enforcement officer" has the meaning
11 given in s. 175.50 (1) (c).

12 **SECTION 6.** 941.23 (2) (a) of the statutes is created to read:

13 941.23 (2) (a) A peace officer.

14 **SECTION 7.** 941.23 (2) (b) of the statutes is created to read:

15 941.23 (2) (b) A qualified out-of-state law enforcement officer. This paragraph
16 only applies if all of the following apply:

17 a. The weapon is a firearm but is not a machine gun, as defined in s. 941.27 (1),
18 or a destructive device.

19 b. A firearm silencer, as defined in s. 941.298 (1), is not attached to the weapon.

20 c. The person is not under the influence of an intoxicant.

 ****NOTE: 1) Under the bill, an out-of-state law enforcement officer or a qualified retiree who carries a concealed weapon other than a firearm or who carries a concealed firearm while under the influence of an intoxicant is guilty of a Class A misdemeanor. (The penalties would be the same as those that apply under current law for unlawfully carrying a concealed weapon.) Is that okay? 2) I did not include any reference to federal law enforcement officers here, because they are already covered by the reference to "peace officer" in current law.

21 **SECTION 8.** 941.23 (2) (c) of the statutes is created to read:

1 941.23 (2) (c) 1. A qualified retired Wisconsin law enforcement officer.

2 2. A qualified retired federal or out-of-state law enforcement officer.

3 3. This paragraph applies only if all of the following apply:

4 a. The weapon is a firearm of the type described in an identification card
5 described in sub. (3) (b) 1. or 2. a. or (c) 1. a. or 2. a. that was issued to the person
6 during the preceding 12 months or a certification described in sub. (3) (b) 2. b. or (c)
7 1. b. or 2. b. that was issued to the person during the preceding 12 months.

8 b. The weapon is not a machine gun, as defined in s. 941.27 (1), or a destructive
9 device.

10 c. A firearm silencer, as defined in s. 941.298 (1), is not attached to the weapon.

11 d. The person is not under the influence of an intoxicant.

CR; 941.23 (3)

12 (3) (a) A person described under sub. (2) (b) carrying a concealed firearm shall,
13 while doing so, also carry an identification card that contains the person's
14 photograph and that was issued by the law enforcement agency by which the person
15 is employed.

16 (b) A person described under sub. (2) (c) 1. carrying a concealed firearm shall,
17 while doing so, also carry one of the following:

18 1. If the person is a resident of this state, an identification card issued under
19 s. 175.50 (2).

20 2. If the person is not a resident of this state, one of the following:

21 a. An identification card issued under s. 175.50 (2).

22 b. A certification that is substantially similar to one issued under s. 175.50 (3)
23 and that was issued by the state in which the person resides and an identification
24 card that contains the person's photograph and that was issued by the law

1 enforcement agency that employed the person immediately before his or her
2 retirement.

3 (c) A person described under sub. (2) (c) 2. carrying a concealed firearm shall,
4 while doing so, also carry one of the following:

5 1. If the person is a resident of this state, one of the following:

6 a. An identification card that was issued by the law enforcement agency that
7 employed the person immediately before his or her retirement and that is
8 substantially similar to one issued under s. 175.50 (2).

9 b. A certification issued under s. 175.50 (3) and an identification card that
10 contains the person's photograph and that was issued by the law enforcement agency
11 that employed the person immediately before his or her retirement.

12 2. If the person is not a resident of this state, one of the following:

13 a. An identification card that was issued by the law enforcement agency that
14 employed the person immediately before his or her retirement and that is
15 substantially similar to one issued under s. 175.50 (2).

16 b. A certification that is substantially similar to one issued under s. 175.50 (3)
17 and that was issued by the state in which the person resides and an identification
18 card that contains the person's photograph and that was issued by the law
19 enforcement agency that employed the person immediately before his or her
20 retirement.

****NOTE: This bill does not provide any special penalty for an active duty or retired law enforcement officer who carries a concealed weapon without the requisite identification. Therefore, under s. 939.61 (1), the person would be subject to a forfeiture not to exceed \$200. Please let me know if you have some other penalty in mind. (If you make it a misdemeanor, I will probably need to treat ss. 938.78 (3), 939.632 (1) (e) 3., and 968.255 (1) (a) 2.)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0975/P1dn

MGD:wlj:pg✓

January 11, 2005

Repo Sherman
Jennifer:

be construed to

1. Most of my questions relating to this bill are included in NOTES in the bill itself. Beyond those specific questions, you should be aware that federal law defines "law enforcement officer" to mean a person who has "statutory powers of arrest." 18 U.S.C. § 926C(c)(2). That could include Wisconsin probation officers. Under s. 973.10 (3), a probation officer may execute an order revoking a person's probation as a "warrant for arrest" and take the person into custody. Nevertheless, I did not draft the bill to cover them.

2. Arguably, under the federal statute, a state or local law enforcement agency may not adopt any policy that restricts what firearms its law enforcement officers may carry or where and when they may carry them. See H.R. Rep. No. 108-560, 108th Cong., 2d Sess. 85-86, reprinted in 2004 U.S. Code Cong. & Admin. News 805, 812-13. The bill does not establish such a restriction under state law. Should it?

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

*because + state courts are
interpretations are what
of this phrase would be
unlikely to construe the
phrase to include probation
officers;*

*(I can provide
you a copy of
this if you would
like)*

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1617/P1dn
MGD:wlj:jf

January 14, 2005

Rep. Sherman:

1. Most of my questions relating to this bill are included in NOTES in the bill itself. Beyond those specific questions, you should be aware that federal law defines "law enforcement officer" to mean a person who has "statutory powers of arrest." 18 U.S.C. § 926C(c)(2). That could be construed to include Wisconsin probation officers. Under s. 973.10 (3), a probation officer may execute an order revoking a person's probation as a "warrant for arrest" and take the person into custody. Nevertheless, because courts are unlikely to construe the term to include probation officers, I did not draft the bill to cover them.

2. Arguably, under the federal statute, a state or local law enforcement agency may not adopt any policy that restricts what firearms its law enforcement officers may carry or where and when they may carry them. *See* H.R. Rep. No. 108-560, 108th Cong., 2d Sess. 85-86, *reprinted in* 2004 U.S. Code Cong. & Admin. News 805, 812-13. (I can provide you a copy of this if you would like.) The bill does not establish such a restriction under state law. Should it?

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

Barman, Mike

From: Barman, Mike
Sent: Tuesday, January 18, 2005 2:52 PM
To: Dsida, Michael
Cc: Sherman, Gary
Subject: FW: Draft review: LRB 05-1617/P1 Topic: Active and retired law enforcement officers carrying concealed weapons

-----Original Message-----

From: Sherman, Gary
Sent: Tuesday, January 18, 2005 2:48 PM
To: Barman, Mike
Cc: Kelly, Judy; Tribys, Eleanora
Subject: RE: Draft review: LRB 05-1617/P1 Topic: Active and retired law enforcement officers carrying concealed weapons

1. As long as this does not violate federal law, the person should pay all costs to limit, or eliminate, any fiscal effect.
2. I think the training, etc, should be available on the same basis as it is available to active officers on that department. That might be more or less often than annually. I don't think the department ought to have to hold training that they would not otherwise hold.
3. DOJ could keep the non-local officers, as provided. The above answers would apply.
4. No need to define mental instability. A little abiguity is a good thing. Just ask the Founders.
5. If not contrary to the federal law, a background and employment check would be appropriate.
6. I like the photo ID idea and I think the issuing agencies can interpret "type of weapon" for themselves, as agencies usually do in carrying out their function.
7. The penalty for intoxicated carrying is ok, but what is the standard for intoxication? That should be spelled out. I would not object to absolute sobriety, like driving a truck, but if there is already one in the law, let's not change it.
8. The general penalty is ok for forgetting your ID.

As to your two separate questions, if the liklihood is that we comply with federal law without addressing those issues, let's not address them.

Gary

From: Barman, Mike
Sent: Friday, January 14, 2005 10:17 AM
To: Rep.Sherman
Subject: Draft review: LRB 05-1617/P1 Topic: Active and retired law enforcement officers carrying concealed weapons

Following is the PDF version of draft LRB 05-1617/P1 and drafter's note.

Dsida, Michael

From: Barman, Mike
Sent: Tuesday, January 18, 2005 2:52 PM
To: Dsida, Michael
Cc: Sherman, Gary
Subject: FW: Draft review: LRB 05-1617/P1 Topic: Active and retired law enforcement officers carrying concealed weapons

-----Original Message-----

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Sent: Tuesday, January 18, 2005 2:48 PM
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Cc: Kelly, Judy; Tribys, Eleanora
Subject: RE: Draft review: LRB 05-1617/P1 Topic: Active and retired law enforcement officers carrying concealed weapons

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- 2. DOJ could keep the non-local officers, as provided. The above answers would apply.
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- 7. The general penalty is ok for forgetting your ID.

As to your two separate questions, if the likelihood is that we comply with federal law without addressing those issues, let's not address them.

Gary

From: Barman, Mike
Sent: Friday, January 14, 2005 10:17 AM
To: Rep.Sherman
Subject: Draft review: LRB 05-1617/P1 Topic: Active and retired law enforcement officers carrying concealed weapons

Following is the PDF version of draft LRB 05-1617/P1 and drafter's note.

*There
 941.29 ~~equal?~~
 941.29 ~~change~~
 To be redone*

01/18/2005



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1617/P1

MGD:wlj:jf

DA Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

5/2/06

*Wednesday 4/9
please
today*

*certification
not "e"*

Regen

1 **AN ACT** *to renumber and amend* 941.23; and *to create* 20.455 (2) (gu), 175.50,
2 941.23 (1), 941.23 (2) (a), 941.23 (2) (b), 941.23 (2) (c) and 941.23 (3) of the
3 statutes; **relating to:** carrying of concealed weapons by out-of-state and
4 retired law enforcement officers, granting rule-making authority, and making
5 an appropriation.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 **SECTION 1.** 20.455 (2) (gu) of the statutes is created to read:
7 20.455 (2) (gu) *Training, identification cards, and certifications relating to*
8 *carrying of concealed weapons.* All moneys received as fees under s. 175.50 (6) to
9 provide training, identification cards, and certifications to retired law enforcement
10 officers seeking to carry concealed weapons.

*and to confirm their eligibility
to do so*

SECTION 2. 175.50 of the statutes is created to read:

175.50 Retired law enforcement officers seeking to carry concealed

weapons. (1) DEFINITIONS. In this section:

(a) "Law enforcement officer" means a person who is employed by a public agency for the purpose of engaging in, or supervising others engaging in, the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and who has statutory powers of arrest.

(b) "Qualified retired federal or out-of-state law enforcement officer" means a person who, before retiring, was employed as a law enforcement officer with a public agency other than a Wisconsin law enforcement agency and who meets the requirements of sub. (4).

(c) "Qualified retired Wisconsin law enforcement officer" means a person who, before retiring, was employed as law enforcement officer with a Wisconsin law enforcement agency and who meets the requirements of sub. (4).

(d) "Tribal law enforcement agency" means an agency of a tribe if the agency is established for the purpose of preventing and detecting crime on the reservation or trust lands of the tribe and enforcing the tribe's laws or ordinances and employs full time one or more persons who are granted law enforcement and arrest powers under s. 165.92 (2) (a).

(e) "Wisconsin law enforcement agency" means a Wisconsin law enforcement agency, as defined in s. 175.46 (1) (f), or a tribal law enforcement agency.

(2) DUTIES OF ^{department and other} WISCONSIN LAW ENFORCEMENT AGENCIES. ^{INS 2/22} Upon request, a

Wisconsin law enforcement agency that employed a qualified retired Wisconsin law enforcement officer immediately before his or her retirement shall provide the officer, at his or her own expense, the opportunity to meet whatever training and

upon request and

attend

INS 3/1 ✓

other standards the agency has established and that its active duty officers must meet to carry the type of firearm the person intends to carry concealed. If the person satisfactorily completes the training, or if the person satisfactorily completed such training during the preceding 12 months and while still employed by the agency, the agency shall issue and provide the ^{officer} person, at his or her own expense, an identification card that includes the ^{officer's} person's photograph and that meets the requirements of sub. (5). ^{upon request and} INS 3/7 ✓

****NOTE: 1) Here and in sub. (3), the bill requires the person to pay for the costs of the training and the ID card or certificate. Is that okay? 2) Should there be any limit on the number of times an agency must provide the training to a particular retiree? For example, should it only be required to provide the training once every 12 months?

Subject to sub (4) ✓

(3) DUTIES OF DEPARTMENT OF JUSTICE. Upon request, the department of justice shall make available to a ^{upon request and} qualified retired federal or out-of-state law enforcement officer, at his or her own expense, ^{opportunities to attend} whatever training the department is required to provide to its active duty officers under s. 165.85 (4) (b) ^{That as a condition of their carrying} regarding the type of firearm the person intends to carry concealed, but only if the person is a resident of this state. ^{if any,} INS 3/9 ✓

If the officer satisfactorily completes the training, the department shall issue and provide the ^{officer} person, at his or her own expense, a written certificate that meets the requirements of sub. (5). ^{upon request and} INS 3/15 ✓

INS 3/15 ✓

****NOTE: There are a number of other ways to allocate the training responsibility between DOJ and other law enforcement agencies. Here are a few: 1) DOJ provides all of the training to retirees (in which case local law enforcement agencies are not involved at all); 2) local law enforcement agencies are required to provide training to any retired law enforcement officer (not just one of their own former employees) who requests it; 3) local law enforcement agencies are required to provide training to any retired law enforcement officer who worked for the federal government or in another state and who requests it; or 4) the Law Enforcement Standards Board selects the agencies that provide the training.

(4) ELIGIBILITY REQUIREMENTS. A retired Wisconsin law enforcement officer is qualified to receive an identification card under sub. (2) and a retired federal or

1 out-of-state law enforcement officer who is a resident of this state is qualified to
2 receive a certification under sub. (3) if all of the following apply:

3 (a) The person retired in good standing from service as a law enforcement
4 officer with a public agency for reasons other than mental instability.

5 *9* *****NOTE:** Federal law does not include a definition of "mental instability." Should
there be one here?

6 (b) At least one of the following apply:

7 1. Before retiring, the person was regularly employed as a law enforcement
officer for an aggregate of 15 years or more.

8 2. The person completed any applicable probationary period of service with the
9 agency and retired from service with the agency due to a service-connected
10 disability, as determined by the agency.

11 (c) The person has a nonforfeitable right to benefits under the agency's
12 retirement plan.

13 (d) The person is not prohibited from possessing a firearm under s. 941.29 or *only retirees*
14 under federal law.

*****NOTE:** The bill does not provide any method to confirm a retiree's eligibility to
carry a concealed weapon. This issue is most relevant with federal and out-of-state
officers, who may have little or no prior contact with the agency (at this point, DOJ) that
issues their certifications. Do you want to require the issuing agency to conduct a
background check and an employment check (which might entail having the person sign
consent forms to allow the release of employment information) before it issues the
certification?

15 (5) REQUIREMENTS FOR IDENTIFICATION CARDS *(C) AND* OR CERTIFICATIONS. *(a)* An
16 identification card issued to a *an officer* person under sub. (2) or a certificate issued to a person
17 *under sub. (3)* shall indicate all of the following:

18 *the agency has found that, and the state's* (a) That the person has met the issuing agency's standards for training for its
19 *active* law enforcement officers to carry a firearm. *and qualification*

20 (b) The date on which the person completed the training described in par. (a).
agency made the finding under subd 10

(20)

1 ³⁰ (a) The type of firearm that, as a result of the ^{finding under sub (4) (b)} ~~training~~, the ^{officer} ~~person~~ ^{may be} is qualified
2 to carry concealed.

INSERT 5-2
****NOTE: 1) Federal law contemplates that, if, after retiring from a law enforcement agency in one state, a person wants to move to another state and carry a concealed weapon there, he or she will have a photo ID issued by that agency. Federal law, however, does not mandate that the agency issue (or reissue) such an ID card. I assume that most officers have photo ID cards when they retire, but do you want to require Wisconsin law enforcement agencies to provide them to retirees who do not have them or who have lost them? If so, should the agency only do so if it first verifies that the person meets the requirements of sub. (4)? 2) Federal law does not define the phrase "type of firearm." Thus, it is unclear whether training regarding the use of a particular model of semiautomatic handgun would qualify the person to carry concealed any handgun, only semiautomatic handguns, or only that model of semi-automatic handgun.

3 (6) FEES. Payments made to the department of justice under sub. (2) or (3) shall
4 be credited to the appropriation under s. 20.455 (2) (gu).
INS 5-4

5 SECTION 3. 941.23 of the statutes is renumbered 941.23 (2) (intro.) and
6 amended to read:

7 941.23 (2) (intro.) Any person ~~except a peace officer~~ other than one of the
8 following who goes armed with a concealed and dangerous weapon is guilty of a Class
9 A misdemeanor;

10 SECTION 4. 941.23 (1) of the statutes is created to read:

11 941.23 (1) In this section:

12 (a) "Destructive device" means any of the following but does not include an
13 exempt device:

14 1. A bomb, a grenade, a rocket having a propellant charge of more than ⁴ ~~four~~
15 ounces, a missile having an explosive or incendiary charge of more than 0.25 ounce,
16 a mine, or any similar device.

17 2. Any type of weapon, other than a shotgun or a shotgun shell that the U.S.
18 department of justice finds is generally recognized as particularly suitable for
19 sporting purposes, that expels, or that may be readily converted to expel, a projectile

1 by the action of an explosive or other propellant and that has a barrel with a bore of
2 more than 0.5 inch in diameter.

3 3. Any combination of parts that is designed for converting, or intended for use
4 in converting, any device into a device described in subd. 1. or 2. and from which a
5 device described in subd. 1. or 2. may be readily assembled.

****NOTE: Like federal law, this bill does not authorize retired law enforcement
officers to carry every type of concealed weapon. It only covers firearms. But Wisconsin
courts have defined "firearm" in such a way (a "weapon that acts by force of gunpowder
to fire a projectile," *State v. Rardon*, 185 Wis. 2d 701, 706 (App. 1994)) that it could be
construed to include bombs or other weapons that lack a barrel. Therefore, like federal
law, the bill explicitly excludes such "destructive devices."

6 (b) "Exempt device" means any of the following:

7 1. A device that is neither designed nor redesigned for use as a weapon.

8 2. A device that, although originally designed for use as a weapon, is redesigned
9 for use as a signaling, pyrotechnic, line throwing, safety, or similar device.

10 3. Surplus ordnance sold, loaned, or given by the U.S. secretary of the army
11 under 10 USC 4684 (2), 4685, or 4686.

12 4. Any other device that the U.S. department of justice finds is not likely to be
13 used as a weapon, is an antique, or is a rifle that the owner intends to use solely for
14 sporting, recreational, or cultural purposes.

15 INS 6/14 (c) "Qualified out-of-state law enforcement officer" means a law enforcement
16 officer, as defined in s. 175.50 (1)(a), to whom all of the following apply:

17 1. The person is employed by a state or local ^{government} public agency in another state.

18 2. The agency has authorized the person to carry a firearm.

19 3. The person is not the subject of any disciplinary action by the agency.

20 4. The person meets all standards established by the agency to qualify the
21 person on a regular basis to use a firearm.

5. The person is not prohibited under s. 941.29 or under federal law from possessing a firearm.

(d) Qualified retired federal or out-of-state law enforcement officer" has the meaning given in s. 175.50 (1) (b).

(e) Qualified retired Wisconsin law enforcement officer" has the meaning given in s. 175.50 (1) (a).

SECTION 5. 941.23 (2) (a) of the statutes is created to read:

941.23 (2) (a) A peace officer.

SECTION 6. 941.23 (2) (b) of the statutes is created to read:

941.23 (2) (b) A qualified out-of-state law enforcement officer. This paragraph only applies if all of the following apply:

a. The weapon is a firearm but is not a machine gun, as defined in s. 941.27 (1), or a destructive device.

b. A firearm silencer, as defined in s. 941.298 (1), is not attached to the weapon.

c. The person is not under the influence of an intoxicant.

****NOTE: 1) Under the bill, an out-of-state law enforcement officer or a qualified retiree who carries a concealed weapon other than a firearm or who carries a concealed firearm while under the influence of an intoxicant is guilty of a Class A misdemeanor. (The penalties would be the same as those that apply under current law for unlawfully carrying a concealed weapon.) Is that okay? 2) I did not include any reference to federal law enforcement officers here, because they are already covered by the reference to "peace officer" in current law.

SECTION 7. 941.23 (2) (c) of the statutes is created to read:

941.23 (2) (c) 1. A qualified retired Wisconsin law enforcement officer.

2. A qualified retired federal or out-of-state law enforcement officer.

3. This paragraph applies only if all of the following apply:

a. The weapon is a firearm of the type described in an identification card described in sub. (3) (b) 1. or 2. a. or (c) 1. a. or 2. a. that was issued to the person.

1 during the preceding 12 months or a ^{valid} certification described in sub. (3) (b) 2. b. or (c)

2 1. b. or 2. b. that was issued to the ^{officer} person during the preceding 12 months.

3 ^{INS} 8/2 ~~b.~~ The weapon is not a machine gun, as defined in s. 941.27 (1), or a destructive
4 device.

5 ~~c.~~ A firearm silencer, as defined in s. 941.298 (1), is not attached to the weapon.

6 ^{INS} ~~d.~~ The ^{officer} person is not under the influence of an intoxicant.

7 ^{INS} 8/6 SECTION 8. 941.23 (3) of the statutes is created to read:

8 941.23 (3) (a) ^{An officer} ~~A person~~ described under sub. (2) (b) ^{who is} carrying a concealed firearm
9 shall, while doing so, also carry an identification card that contains ^{his or her} the person's
10 photograph and that was issued by the law enforcement agency by which ^{he or she} the person
11 is employed.

12 ^{An officer} (b) ~~A person~~ described under sub. (2) (c) 1. ^{who is} carrying a concealed firearm shall,
13 while doing so, also carry one of the following:

14 1. If the ^{officer} ~~person~~ is a resident of this state, an identification card issued under
15 s. 175.50 (2) ^(b) ~~(a)~~

16 2. If the ^{officer} ~~person~~ is not a resident of this state, one of the following:

17 a. An identification card issued under s. 175.50 (2) ^{INS 8/17} ~~(a)~~ ^(b)

18 b. A certification that is substantially similar to one issued under s. 175.50 (3) ^(b) ~~(a)~~

19 and that was issued by the state in which the ^{officer} ~~person~~ resides and an identification
20 card that contains ^{SET} ~~the person's~~ ^{this member officer's} photograph and that was issued by the law
21 enforcement agency that employed ^{the officer} ~~the person~~ immediately before his or her
22 retirement.

23 ^{An officer} (c) ~~A person~~ described under sub. (2) (c) 2. ^{who is} carrying a concealed firearm shall,
24 while doing so, also carry one of the following:

25 1. If the ^{officer} ~~person~~ is a resident of this state, one of the following:

1 a. An identification card that was issued by the law enforcement agency that
2 employed the ^{officer} ~~person~~ immediately before his or her retirement and that is
3 substantially similar to one issued under s. 175.50 (2) ^(b)

4 b. A certification issued under s. 175.50 (3) ^(b) and an identification card that
5 contains the ^{officer's} ~~person's~~ photograph and that was issued by the law enforcement agency
6 that employed the ^{officer} ~~person~~ immediately before his or her retirement.

7 2. If the ^{officer} ~~person~~ is not a resident of this state, one of the following:

8 a. An identification card that was issued by the law enforcement agency that
9 employed the ^{officer} ~~person~~ immediately before his or her retirement and that is
10 substantially similar to one issued under s. 175.50 (2) ^(b)

11 b. A certification that is substantially similar to one issued under s. 175.50 (3) ^(b)
12 and that was issued by the state in which the ^{officer} ~~person~~ resides and an identification
13 card that contains the ^{officer's} ~~person's~~ photograph and that was issued by the law
14 enforcement agency that employed the ^{officer} ~~person~~ immediately before his or her
15 retirement.

***NOTE: This bill does not provide any special penalty for an active duty or retired law enforcement officer who carries a concealed weapon without the requisite identification. Therefore, under s. 939.61 (1), the person would be subject to a forfeiture not to exceed \$200. Please let me know if you have some other penalty in mind. (If you make it a misdemeanor, I will probably need to treat ss. 938.78 (3), 939.632 (1) (e) 3., and 968.255 (1) (a) 2.)

16

(END)

INS 9/15

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1617/lins
MGD:.....

INSERT 2/3

(a) "Department" means the department of justice.

INSERT 2/22

(No F)

Subject to sub. (4),[✓] after a law enforcement officer retires from service with a Wisconsin law enforcement agency, the agency shall do all of the following:

INSERT 3/1

(No F)

that its active duty officers are required to complete, either under s. 165.85 (4) (bn)[✓] or under policies adopted by the agency, as a condition of their carrying firearms.

(b)

INSERT 3/7

(No F)

if the ^{officer} ~~person~~ is a resident of this state, he or she meets the standards established by the agency, if any, for qualification for active law enforcement officers to carry a firearm, and one of the following applies:

1. Within the preceding 12 months, the ^{officer} ~~person~~ satisfactorily completed the training provided under par. (a).[✓]

2. Within the preceding 12 months, the ^{officer} ~~person~~ satisfactorily completed any training that the agency's active duty officers were required to complete, either under s. 165.85 (4) (bn)[✓] or under policies adopted by the agency, as a condition of their carrying firearms.

3. The agency's active duty officers are not required to complete any training, either under s. 165.85 (4) (bn)[✓] or under policies adopted by the agency, as a condition of their carrying firearms.[✓]

(c) Issue and provide the ^{officer} ~~person~~, upon request and at his or her own expense, a photographic identification card that indicates that the ^{officer} ~~person~~ retired from service from the agency as a law enforcement officer. This paragraph [✓] ~~only applies~~ if the ^{officer} ~~person~~ is not a resident of Wisconsin when requesting the issuance of the card.

INSERT 3/9

Not

do all of the following:

(a) Provide

INSERT 3/15

Not

if one of the following applies:

1. Within the preceding 12 months, the ~~person~~ ^{officer} satisfactorily completed the training provided under par. (a).[✓]

2. The department is not required to provide training under s. 165.85 (4) (bn) [✓] to its active duty officers as a condition of their [✓] carrying firearms.

(4) PREREQUISITES FOR ~~FOR~~ AGENCY OR DEPARTMENT ACTION. (a) ^Δ *Law enforcement employment verification.* Subsections (2) and (3) [✓] do not apply unless the law enforcement agency [✓] or the department [✓], as applicable, confirms all of the following:

1. That the ^{officer} ~~person~~ [✓] retired in good standing from service as a law enforcement officer with a public agency for reasons other than mental instability.

2. That at least one of the following apply:

a. Before retiring, the ^{officer} ~~person~~ was regularly employed as a law enforcement officer for an aggregate of 15 years or more.

b. The ^{officer} ~~person~~ completed any applicable probationary period of service with a public agency and retired from service with the agency due to a service-connected disability, as determined by the agency.

3. That the ^{officer} ~~person~~ has a nonforfeitable right to benefits under a law enforcement agency's retirement plan.

(b) *Firearms restrictions record searches.* Subsections (2) and (3) ^{only} apply if the department determines that its records do not indicate that the ^{retired law enforcement officer} ~~person~~ is prohibited from possessing a firearm under s. 941.29 (1) (a), (b), (bm), (c), (d), (e), or (g) or federal law. The department shall promulgate rules specifying how other Wisconsin law enforcement agencies may request that the department make such a determination with respect to a ^{person} formerly employed as a law enforcement officer by that agency. Rules promulgated under this paragraph may require the agency to pay a fee to the department, which the agency may collect from the retired law enforcement officer.

(c) *Residency requirement.* Subsection (3) does not apply unless the retired federal or out-of-state law enforcement officer is a resident of this state.

(d) *Consents.* A law enforcement agency or the department may require a ^{retired law enforcement officer} ~~person~~ to sign appropriate consents for release of information to enable the agency or the department to confirm that ^{he or she} ~~a person~~ meets all of the prerequisites under this subsection for the agency or the department to act under sub. (2) or (3).

(e) *Fees.* A law enforcement agency or the department may require a ^{retired law enforcement officer} ~~person~~ to pay a fee, not to exceed the agency's or the department's costs, for verifying ^{his or her} ~~the~~ ^{person's} employment history or retirement plan status or for determining whether ^{he or she} ~~the person~~ is eligible to possess a firearm under s. 941.29, if applicable, and federal law.

(END INSERT 3/15)

²
INSERT 5/4

(b) A certificate issued to ^{an officer} ~~a person~~ under sub. (3) shall indicate all of the following:

1. That the department has found that the ^{officer} ~~person~~ ^{its active duty} has met the state's standards for training and qualification for law enforcement officers to carry a firearm.
2. The date on which the department made the finding under subd. 1. ✓
3. The type of firearm that, as a result of the finding, ^{under subd. 1.} the ^{officer} ~~person~~ may be qualified to carry concealed.

INSERT 5/4

(7) SCHEDULING OF TRAINING. A Wisconsin law enforcement agency is not required to offer training under sub. (2) or (3) other than through regularly scheduled sessions for its active duty law enforcement officers.

INSERT 6/14

(c) "Law enforcement officer" has the meaning given in s. 175.50 (1) ^b ~~(a)~~. ✓

INSERT 7/5

^{Not} means a person who, before retiring, was employed as ^{or} law enforcement officer with a Wisconsin law enforcement agency, as defined in s. 175.50 (1) (e). ✓

INSERT 8/2

b. Within the preceding 12 months, the ^{officer} ~~person~~ met the standards of the state in which he or she resides for training and qualification for active law enforcement officers to carry firearms.

INSERT 8/6

^{officer} f. The ~~person~~ is not prohibited under federal law from possessing a firearm.

INSERT 8/17

^{Not} (b) if the ~~person~~ was a resident of this state when the card was issued

INSERT 9/15

SECTION ~~1~~ 941.237 (3) (k) of the statutes is created to read:

941.237 (3) (k) A qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (d), who is carrying a concealed firearm, but only if s. 941.23 (2) (b) 1. to 3. ^{applies} apply.

~~SECTION 2.~~ 941.237 (3) (L) of the statutes is created to read:

941.237 (3) (L) A retired Wisconsin law enforcement officer, as defined in s. 941.23 (1) (f), ^{or} or a retired federal out-of-state law enforcement officer, as defined in s. 175.50 (1) (c), who is carrying a concealed firearm, but only if s. 941.23 (2) (c) 3. a. to f. ^{applies} apply.

~~SECTION 3.~~ 941.29 (10) (c) of the statutes is created to read:

941.29 (10) (c) The person is a retired Wisconsin law enforcement officer, as defined in s. 941.23 (1) (f), ^{or} or a retired federal out-of-state law enforcement officer, as defined in s. 175.50 (1) (c), who is carrying a concealed firearm, but only if s. 941.23 (2) (c) 3. a. to f. ^{applies} apply.

~~SECTION 4.~~ 941.29 (11) of the statutes is created to read:

941.29 (11) The person is a qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (d), who is carrying a concealed firearm, but only if s. 941.23 (2) (b) 1. to 3. ^{applies} apply.

Dsida, Michael

From: Dsida, Michael
Sent: Tuesday, February 08, 2005 11:35 AM
To: Sherman, Gary
Subject: RE: Retired peace officers carrying concealed weapons

Though I suspect that some will claim otherwise, that would be consistent with federal law.

-----Original Message-----

From: Sherman, Gary
Sent: Tuesday, February 08, 2005 11:28 AM
To: Dsida, Michael
Subject: RE: Retired peace officers carrying concealed weapons

Yes, as long as it is clear that the retired officer needs to meet all requirements for training etc that the agency imposes on its active officers. Would that meet the federal mandate?

G

From: Dsida, Michael
Sent: Tuesday, February 08, 2005 11:26 AM
To: Sherman, Gary
Subject: RE: Retired peace officers carrying concealed weapons

So I will draft the bill to require DOJ and other Wisconsin law enforcement agencies to provide the ID card to their former officers. Retirees from out-of-state will still be eligible to carry a concealed firearm if they get an ID card from their former employer.

-----Original Message-----

From: Sherman, Gary
Sent: Monday, February 07, 2005 11:43 AM
To: Dsida, Michael
Subject: RE: Retired peace officers carrying concealed weapons

I like keeping it local, with the officer paying the cost, but I do want to make sure we comply with the federal law.

Gary

From: Dsida, Michael
Sent: Monday, February 07, 2005 11:02 AM
To: Sherman, Gary
Subject: RE: Retired peace officers carrying concealed weapons

I think that will work. There's nothing in federal law that requires a state to issue certifications or identification cards. (18 U.S.C. § 926C (d) refers to the "identification required by this subsection," but it seems fairly clear that it means the identification required of the retired officer to be eligible. It does not seem to mean the identification required to be issued by the state or local law enforcement agency. And if that were the intent, I'm not sure the law would be constitutional under Printz.) The only thing it requires is that the state set aside its own concealed carry laws with respect to a qualified retired officer who has the requisite ID card or ID card + certification.

That leads to another question. (Sorry.) Do you still want to include provisions regarding ID cards for retired Wisconsin law enforcement officers? If so, should it be a requirement for the agency (with the officer paying the cost), or do you merely want to authorize them to do so?

-----Original Message-----

From: Sherman, Gary
Sent: Monday, February 07, 2005 10:26 AM

To: Dsida, Michael
Subject: RE: Retired peace officers carrying concealed weapons

Probably separate sections, one bill, so that we can meet the federal mandate all at once.

How about meeting the standard of the agency from which they retired?

G

From: Dsida, Michael
Sent: Monday, February 07, 2005 9:56 AM
To: Sherman, Gary
Subject: RE: Retired peace officers carrying concealed weapons

If the officer can get certified annually by his or her ex-employer (for example, if there are no mandatory classes or residency requirement in Colorado), he or she can qualify under either state's standards. If recertification by Colorado doesn't work (and I'm sure at least a few states will be slow to enact their own certification/identification card statutes), then the officer would need to meet the Wisconsin standards and get a "certification issued by the state." (He or she could not get one from a local law enforcement agency.)

I know you want something relatively simple, but the federal statute is making that very difficult to do for retirees. Do you want to have the retirees covered in a separate bill? A bill covering active duty out-of-state officers alone should be relatively simple. (Famous last words.)

-----Original Message-----

From: Sherman, Gary
Sent: Friday, February 04, 2005 6:51 PM
To: Dsida, Michael
Subject: RE: Retired peace officers carrying concealed weapons

Actually, what I meant was, if an officer retired from Colorado to Wisconsin, could that officer get the permit from a Wisconsin department, even though he had never worked in a Wisconsin department, and, if so, which department would govern? If it is something you haven't thought about, then don't. I would like to keep this as simple as possible and would be just as glad not to add another complex issue.

If you want to ask NCSL how other states that don't have statewide standards enacted are dealing with compliance with the federal law, that would be fine with me.

Gary

From: Dsida, Michael
Sent: Friday, February 04, 2005 5:03 PM
To: Sherman, Gary
Subject: RE: Retired peace officers carrying concealed weapons

I need to think more about your suggestion to see if it could work. With respect to your question about officers who had worked in other states, are you asking whether other states have statewide standards? If so, would you mind if I contacted NCSL about that?

-----Original Message-----

From: Sherman, Gary
Sent: Friday, February 04, 2005 4:49 PM
To: Dsida, Michael
Subject: RE: Retired peace officers carrying concealed weapons

Could we provide that they meet the requirement of the agency from which they retired? I don't know what that does for those who come from another state, though. How are they treated in general?

G

From: Dsida, Michael
Sent: Wednesday, February 02, 2005 4:43 PM
To: Sherman, Gary
Subject: RE: Retired peace officers carrying concealed weapons

Although there is mandatory firearms training for recruits, there is no other state-mandated firearms training for law enforcement officers. (I suspect that individual agencies may require ongoing training for their officers, though.) To quote the Attorney General, "at the point at which the federal Act contemplates that retired officers will annually meet state firearm training and qualification standards for active officers, there is currently a void in Wisconsin law." (This is part of a memorandum that the Attorney General prepared for the Governor and the Majority and Minority Leaders. If you would like, I can send you a copy.)

-----Original Message-----

From: Sherman, Gary
Sent: Wednesday, February 02, 2005 4:24 PM
To: Dsida, Michael
Cc: Tribys, Eleanora; Kelly, Judy
Subject: RE: Retired peace officers carrying concealed weapons

Didn't mean to shake up the whole system, you know. Young people just need a little maturing.

In any event, I think what confuses me is your statement that Law Enforcement Standards Board has no standards. Is that really true? I know that they have courses.

Gary

From: Dsida, Michael
Sent: Wednesday, February 02, 2005 4:14 PM
To: Rep.Sherman
Subject: Retired peace officers carrying concealed weapons

I am redrafting the bill to make the changes that you requested in your email, but I wanted to revisit the question of training.

In an email I sent to you at the end of December, I suggested that the federal law may apply to retirees who have not received training if the state does not have any training requirements. I based that suggestion on the language of the statute, which states that a retiree is eligible if (among other things), "during the most recent 12-month period, [he or she] has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms." 18 U.S.C. § 926C(c)(5). I concluded from this that if a state had no "standards for training and qualification," it was not required to create any. There is an argument to be made, however, that the state must have *some* standards in order for the federal exemption to apply. The provisions dealing with active duty out-of-state officers in 18 U.S.C. § 926B(c)(4) require the officer to "meet standards, *if any*, established by the agency" regarding firearms. This language indicates that when Congress intended to allow for the absence of standards, it knew how to say so.

In my opinion, this question could be answered either way, but since you are an attorney yourself, I wanted to give you the option of deciding how you want to handle it. In the meantime, I will continue to work off my original assumption.

Mike Dsida
Legislative Reference Bureau
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